

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
DEC 10 2003

FILE

OFFICE OF
MANAGING DIRECTOR

Beth A. Jenkins, Vice President
Music Express Broadcasting Corporation
Post Office Box 800
Chardon, Ohio 44024-0800

Re: Request for Refund of FY 2003 Regulatory Fee
Fee Control No. 0309228835172023

Dear Ms. Jenkins:

This is in response to your request dated September 25, 2003, for waiver and refund of the regulatory fee for Fiscal Year (FY) 2003 in the amount of \$1,200 submitted on behalf of AM station WATJ, Chardon, Ohio, licensed to Music Express Broadcasting Corporation.

You request relief from payment of the regulatory fee on the ground of financial hardship. In support of your request, you attach copies of WATJ's most recent profit and loss statement and balance sheet. In addition, you assert that no compensation is being paid, or ever has been paid, to the company's officers. You also point out that WATJ was granted fee waivers in FY's 1997, 1999, 2000, 2001, and 2002.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995).

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

Our review of WATJ's most recent profit and loss statement for the period January through August 2003 indicates that the station suffered an operating loss of \$37,131.63, which was only partially offset by depreciation expenses totaling \$7,343.44. In addition, you represent that WATJ pays no compensation to its officers. Accordingly, in light of WATJ's compelling showing of financial hardship, your request for waiver and refund of the FY 2003 regulatory fee is granted.


Beth A. Jenkins, Vice President

2.

A check, made payable to the maker of the original check and drawn in the amount of \$1,200.00, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger".

 Mark A. Reger
Chief Financial Officer

0309228835172023

MUSIC EXPRESS
BROADCASTING CORPORATION
WATJ

P.O. Box 800
Chardon, OH 44024-0800

Phone: (440) 286-8781

Fax: (440) 286-9247

RECEIVED & INSPECTED

SEP 29 2003

FCC - MAILROOM

Office of the Managing Director
Federal Communications Commission
Attn.: Regulatory Fee Waiver/Reduction Request
445 12th Street, S. W., Room 1-A625
Washington, D.C. 20554

September 25, 2003

Re: Request for Waiver of Regulatory Fee and Return of Fee Payment
AM Radio Station WATJ, 1560

Dear Sir or Madam,

I write to seek relief from payment of regulatory fees because of financial hardship. Additionally, I formally request reimbursement of the \$1,200.00 fee paid earlier this month for FY 2003. For purposes of tracking this payment I have enclosed a date-stamped copy of Form 159 that was submitted with our payment. We note for the record, and with considerable distress, that FY 2003 fee for WATJ has increased an unconscionable 26% over the FY 2002 fee in the amount of \$950.00.

I am enclosing copies of our most recent profit and loss statement and balance sheet, and also a copy of Mr. Mark Reger's letter dated January 15, 2003, granting relief from FY 2002 regulatory fee.

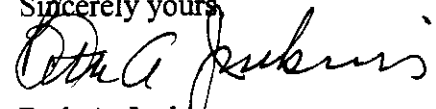
Please be advised that no compensation is now being, or has ever been, paid to officers.

The FCC granted WATJ relief from FY 1997, 1999, 2000, 2001 and 2002 regulatory fees.

In consideration of all the above, please therefore grant us relief from Regulatory Fees for FY 2003 and reimburse us the \$1,200.00 fee already remitted.

Thank you for your consideration.

Sincerely yours,



Beth A. Jenkins
Vice President

/baj
Enclosures

RECEIVED SEP 30 2003

FCC/MELLON SEP 19 2003

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICEApproved by OMB
3060-0589
Page 1 of 1

(1) LOCK BOX #		SPECIAL USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Music Express Broadcasting Corp.		(3) TOTAL AMOUNT PAID (U S Dollars and cents) \$1,200.00	
(4) STREET ADDRESS LINE NO 1 P. O. Box 800			
(5) STREET ADDRESS LINE NO 2			
(6) CITY Chardon		(7) STATE OH	(8) ZIP CODE 44024-0800
(9) DAYTIME TELEPHONE NUMBER (include area code) 440-286-8781		(10) COUNTRY CODE (if not in U S A)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004-9232-31		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME			
(14) STREET ADDRESS LINE NO 1			
(15) STREET ADDRESS LINE NO 2			
(16) CITY		(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U S A)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN)		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID WATJ 1560 AM	(24A) PAYMENT TYPE CODE 0338	(25A) QUANTITY: 1	
(26A) FEE DUE FOR (PTC) \$1,200.00	(27A) TOTAL FEE \$1,200.00		FCC USE ONLY
(28A) FCC CODE 1 20337		(29A) FCC CODE 2 OH, Chardon	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		FCC USE ONLY
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>William Jones</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u>William Jones</u> DATE <u>9-18-03</u>			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____ ACCOUNT NUMBER _____ EXPIRATION DATE _____ I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described. SIGNATURE _____ DATE _____			

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JAN 15 2003

OFFICE OF
MANAGING DIRECTOR

Beth A. Jenkins, Vice President
Music Express Broadcasting Corporation
Post Office Box 800
Chardon, Ohio 44024-0800

Re: Request for Waiver of FY 2002 Regulatory Fee
Fee Control No.: 00000RROG-03-056

Dear Ms. Jenkins:

This letter grants your request dated November 6, 2002, for waiver of the regulatory fee for Fiscal Year (FY) 2002 in the amount of \$950 submitted on behalf of AM station WATJ, Chardon, Ohio, licensed to Music Express Broadcasting Corporation.

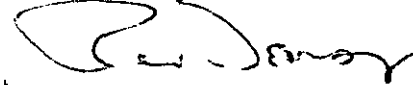
In support of your request for waiver of the regulatory fee on the ground of financial hardship, you attach copies of WATJ's most recent profit and loss statement and balance sheet. In addition, you contend that no compensation is being paid to the company's officers. You also point out that WATJ was granted fee waivers in FY's 1997, 1999, 2000, and 2001.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994); recon. granted, 10 FCC Rcd 12759 (1995).

Our review of WATJ's profit and loss statement for the period January through October 2002 indicates that the station paid no compensation to its officers and that it suffered an operating loss of \$32,029.73, which was only partially offset by depreciation expenses totaling \$12,993.92. Accordingly, in light of WATJ's compelling showing of financial hardship, your request for waiver of the FY 2002 regulatory fee is granted.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark A. Reger
Chief Financial Officer

AR012-A
10/16/2003
10:53:30

RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.
RECEIPTS DETAIL REPORT
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1
10/16/2003
10:53:30

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560238	5/30/01	0105308180120006	0004923231	Music Express Broadcasting Cor	5/29/01	\$50.00
Seq: 1 Call Sign: WATJ FCC Code 1: 20337 FCC Code 2: CDBS20010523AAD Tin Number: 0341580271 PTC: MAR QTY: 1 Applied Amt: 50.00 Applicant Name: MUSIC EXPRESS BROADCASTING COR Address: 95 WEST MAIN STREET						
560598	11/21/02	0211218835021001	0004923231	Music Express Broadcasting Cor	11/20/02	\$750.00
Seq: 1 Call Sign: WATJ1560AM FCC Code 1: 20337 FCC Code 2: OHCHARDON Tin Number: 0341580271 PTC: MDD8 QTY: 1 Applied Amt: 750.00 Applicant Name: MUSIC EXPRESS BROADCASTING COR Address: PO BOX 800						
560723	5/22/03	0305228180207003	0004923231	Music Express Broadcasting Cor	5/21/03	\$50.00
Seq: 1 Call Sign: WATJ FCC Code 1: 20337 FCC Code 2: CDBS20030515ABU Tin Number: 0000000000 PTC: MAR QTY: 1 Applied Amt: 50.00 Applicant Name: MUSIC EXPRESS BROADCASTING COR Address: 95 WEST MAIN STREET						
560546	9/06/02	0209068835537015	0004923231	Music Express Broadcasting Cor	8/01/03	\$950.00
Seq: 1 Call Sign: WATJ1560AM FCC Code 1: 20337 FCC Code 2: OHCHARDON Tin Number: 0341580571 PTC: 0238 QTY: 1 Applied Amt: 950.00 Applicant Name: MUSIC EXPRESS BROADCASTING COR Address: PO BOX 800						
560809	9/22/03	0309228835172023	0004923231	Music Express Broadcasting Cor	9/19/03	\$1,200.00
Seq: 1 Call Sign: WATJ1560AM FCC Code 1: 20337 FCC Code 2: OHCHARDON Tin Number: PTC: 0338 QTY: 1 Applied Amt: 1200.00 Applicant Name: MUSIC EXPRESS BROADCASTING COR Address: PO BOX 800						
Total:				\$3,000.00		

**Before the
Federal Communications Commission
Washington, D.C. 20445**

In the Matter of)	
)	
Phoenix Broadcasting, Inc)	Fee Control No 00000RROG-03-071
Stations KSWD and KPFN)	
Seward, Alaska)	
)	
Request for Waiver of FY 2000)	
Regulatory Fees)	

MEMORANDUM OPINION AND ORDER

Adopted December 8, 2003

Released December 15, 2003

By the Commission

1 The Commission has before it an Application for Review filed by Phoenix Broadcasting, Inc (Phoenix). Phoenix seeks review of a decision of the Managing Director denying its petition for reconsideration.¹ Phoenix had requested that the Managing Director reconsider its letter ruling denying waivers of the fiscal year (FY) 2000 regulatory fees and associated late fees for Stations KSWD and KPFN in Seward, Alaska on grounds of financial hardship.² For the reasons set forth below we deny the Application for Review.

BACKGROUND

2 Phoenix is the licensee of full-service Stations KSWD and KPFN(FM), which are licensed to serve Seward, an Alaskan community of fewer than 5,000. It sought a waiver on financial hardship grounds of the Fiscal Year 2000 regulatory fee of \$300 for each of its two stations.³ In particular, it alleged that the stations were in a precarious financial condition due to the continued operation in Seward of FM translator Stations K285EG and K272DG, licensed to Peninsula Communications, Inc (Peninsula), in violation of FM translator rules in effect since

¹ Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, Federal Communications Commission, to David Tillotson, Counsel, Phoenix Broadcasting, Inc. (dated January 31, 2003).

² Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, Federal Communications Commission, to David Tillotson, Counsel, Phoenix Broadcasting, Inc. (dated September 24, 2002) (*September 24 Letter Decision*).

³ Phoenix has not paid the \$300 regulatory fee or the \$75 late charge for either station. See *September 24 Letter Decision*, ¶ 1.

1990⁴ Due to the potential competitive impact of translator stations on full service radio broadcast service particularly in less populated areas, the Commission authorizes FM translator stations on a secondary basis only under rules restricting their service, ownership, sources of financial support, and program origination⁵ As amended in 1990 to emphasize the secondary nature of FM translator service, Sections 74.1231(b) and 74.1232(d) setting forth the signal delivery and eligibility requirements, preclude operation of the Seward FM translators

3 The fee waiver request was premised on the Commission's alleged failure to enforce its February 2000 decision ordering Peninsula to cease operating the two Seward FM translator stations⁶ and to expedite its May 2001 show cause order against Peninsula⁷ By its *September 24 Letter Decision*, the Office of Managing Director (OMD) denied Phoenix's waiver request for failure to present a compelling case of financial hardship as required by the Commission's rules but invited the licensee to refile with appropriate supporting documentation Instead of submitting any documentation, Phoenix sought reconsideration It pointed to statements in the Commission's February 2000 termination order to the effect that the Seward FM translator stations were "taking between \$4,000 and \$6,000 per month in radio revenues out of Seward," and that their continued operation "would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward" *Peninsula Communications, Inc.*, 15 FCC Rcd 3293, 3295 ¶ 9 (2000) In denying reconsideration, OMD ruled that the Commission's orders in *Peninsula* addressed issues unrelated to fee waivers and therefore could not be relied on to support Phoenix's claim of sufficient financial hardship for a waiver

4 In its Application for Review, Phoenix maintains that OMD erred in denying its waiver request No further documentation of financial hardship is required to justify a waiver, Phoenix contends, given what it describes as the Commission's clear finding in *Peninsula* that continued operation of the FM translators jeopardizes the very viability of Phoenix's two full-service broadcast stations in Seward Phoenix also objects to having to pay regulatory fees intended to defray the cost of regulation and based on the value of the license when it believes the Commission's failure to enforce translator rules in effect since 1990 has seriously devalued Phoenix's licenses In particular, Phoenix asserts the Commission delayed enforcing the

⁴ By virtue of waivers in effect until May 10, 2003, Peninsula has rebroadcast on those stations the signals of Peninsula's primary full service Stations KPEN-FM (Soldotna, Alaska) and KWVV-FM (Homer, Alaska) *Peninsula Communications, Inc.*, 18 FCC Rcd 4027 (2003) (modifying the licenses for Stations K272DG and K285EG to terminate the previously granted waivers of Sections 74.1231(b) and 74.1232(d))

⁵ See generally *Amendment of Part 74 of the Commission's Rules Concerning FM Translators*, 5 FCC Rcd 7212 (1990), *recon. denied*, 8 FCC Rcd 5093 (1991) (Hereafter *FM Translators*)

⁶ *Peninsula Communications, Inc.*, 15 FCC Rcd 3293 (2000) (ordering termination of the Seward waivers within 60 days in light of commencement of operation of Station KPFN(FM))

⁷ *Peninsula Communications, Inc.*, 16 FCC Rcd 11364 (2001) (order rescinding February 2000 termination of the waivers but ordering Peninsula to show cause why its licenses for the Seward FM translator stations should not be modified to discontinue previously granted waivers)

February 2000 termination order directing Peninsula to cease operating the Seward translator stations and failed to expedite the May 2001 order directing Peninsula to show cause why the Seward translator licenses should not be modified to eliminate waivers necessary for their continued operation in Seward. Phoenix claims that it has continued to operate the full power stations to its financial detriment in the hope that the Commission will eventually enforce its translator rules, enabling it to eke out a profit, notwithstanding the community's small advertising base.

DISCUSSION

5 We will deny the application for review. The Commission is statutorily required to assess and collect regulatory fees based on the annual cost to the Commission of certain regulatory activities. 47 U.S.C. § 159(a)(1). Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby. 47 U.S.C. § 159(d), 47 C.F.R. § 1.1166. *See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 ¶12 (1995). The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. 9 FCC Rcd at 5344 ¶ 29. Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. 10 FCC Rcd at 12761-62 ¶ 13 (stating that "[m]ere allegations or documentation of financial loss, standing alone," does not suffice and that "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public"). *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, FCC 03-184 ¶ 13 (released Jul. 25, 2003) (reflecting continued belief that the public is served by affording relief from fees to assist a financially distressed regulatee in remaining an effective competitor but capping such relief to preserve agency's ability to collect statutorily required fees). *See also* 47 C.F.R. § 1.1166(c) (waiver requests that do not include required fees will be dismissed unless supported by documentation of financial hardship).

6 As OMD advised Phoenix, "[r]egulatees can establish financial hardship by submitting 'information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.'" *September 24 Letter Decision*, citing 10 FCC Rcd at 12761-62 ¶ 13. For the reasons set forth below we agree with OMD that Phoenix is not entitled to rely for this purpose on various Commission actions in *Peninsula* addressing issues that do not concern Phoenix's eligibility for waiver of the regulatory fees associated with Stations KSWD and KPFN. And, in the absence of a documented showing of insufficient funds to pay the regulatory fees, Phoenix has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.

7 In particular, notwithstanding Phoenix's contention, the Commission has not made a "clear finding" in *Peninsula* or elsewhere that Stations KSWD and KPFN are suffering

significant financial hardship so as to call into question their livelihood, or otherwise made an assessment of the stations' actual financial condition for purposes of granting regulatory fee waivers. Assessing eligibility for a fee waiver requires examination of a station's financial documentation to determine if payment of the fee will prevent the station from maintaining its service to the public. The issue in *Peninsula* related not to Phoenix's eligibility for a fee waiver but to the continuing public interest viability of Peninsula's waivers of FM translator rules, without which it could not operate the Seward FM translator stations. The statements in *Peninsula Communication, Inc.*, 15 FCC Rcd 3293, 3295, regarding the amount of monthly radio revenues potentially siphoned off by the Seward FM translator stations thus do not purport to assess the current financial situation of the Phoenix stations or their ability to pay the regulatory fees and still provide full service broadcast service to that community. Rather, the findings cited by Phoenix represent only a generalized assessment as to the potential competitive impact of the continued operation of the FM translators on any full service broadcast station licensed to serve Seward.

8 It is possible, of course, that competition from the translator stations may have affected Phoenix's ability to pay its regulatory fees. But that fact does not mean that Phoenix can avoid the need to make the mandatory showing that has consistently been required under our rules and policies. Phoenix, having chosen to rely solely on the Commission's licensing and enforcement actions in the *Peninsula* proceeding, and having declined OMD's invitation to submit the necessary support for fee relief, has failed to provide the required documentation to warrant a waiver on grounds of financial hardship.

9 ACCORDINGLY, IT IS ORDERED That the Application for Review filed on February 18, 2003 by Phoenix Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary